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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/377,447	08/19/1999	JEFFREY P. BEZOS	AMAZON.012A1	7836

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EXAMINER

ZURITA, JAMES H

ART UNIT

PAPER NUMBER

3625

DATE MAILED: 07/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Applicati n N .

09/377,447

Applicant(s)

BEZOS ET AL.

Examiner

James Zurita

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-- The MAILING DATE f this communicati n appears on the c ver sheet with the corresp ndence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003 .
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . 6) ☐ Other: _____ .

DETAILED ACTION

Response to Amendment

In an amendment filed 21 April 2003, Applicants amended claims 1, 12, 13, 24, 26-30, 32, 39, 40, 42-46, 51 and 53.

Claims 1-57 remain and will be examined.

Response to Arguments

Applicant's arguments filed 21 April 2003 have been fully considered but they are not persuasive.

Applicants' arguments concerning amended claims 1, 12, 26, 32, 43 and 51 are also moot in view of amendments to those claims.

Applicants' arguments concerning Bieganski, Robinson I and Robinson II are not persuasive. Please note that prior rejections referred to Robertson (US 6,269,369) and to Robinson (US 5,790,426). There is no Robinson I and Robinson II. Applicants' references to Robinson I will be interpreted as addressing Robertson (US 6,269,369), and references to Robinson II will be interpreted as applying to Robinson (US 5,790,426).

Applicant argues that

The Examiner also relies in-part on the disclosure of certain statistical tools and probability distributions in **Robinson II**. Office Action at page 6, last six lines. These statistical tools and probability distributions apparently do not, however, seek to identify items that are disproportionately popular within, or which otherwise distinguish, specific communities.

In response, the Examiner respectfully notes that references to statistical tools were introduced partly to address applicants' concerns over absence of prior art references that disclose analysis tools and algorithms used in the field of marketing:

With respect to the Examiner's assertions regarding statistical analysis tools and algorithms used in the field of marketing, Applicants respectfully request that the Examiner identify specific prior art references that disclose such analysis tools and algorithms. Amendment B.

As applicants had requested, the Examiner provided this information, specifically noting the use of the chi-square algorithm in the context of collaborative filtering:

These are identified below, in the section entitled Claim Rejections - 35 USC § 103. See at least references to Robinson (US Patent 5,790,426) concerning the use of statistical tools and algorithms in an automated collaborative filtering system.

For example, Robinson (US Patent 5,790,426), discloses at least the use of statistical tools including binomial and Z-score distributions, a Chi-Square distribution. Robinson presents alternative techniques to recommending at least one item to a first user based on similarity in presence of the user as compared with other users (see at least Abstract, see also at least Col. 28, lines 49-56).

Applicants now argue that Robinson his statistical tools are not directed to the problem of assisting users in making selections of items from an electronic catalog. This argument is not persuasive, since Robinson specifically discloses statistical tools that are recited in applicants' claims.

Even if one were to accept this particular argument as having merit, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Robinson I used to convince applicants that one of ordinary skill in the art at the time the

invention was made would have known to use statistical tools, including such as those relied upon by applicants.

In response to applicant's arguments against Bieganski, Robertson and Robinson individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the *references themselves or in the knowledge generally available to one of ordinary skill in the art*. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Bieganski was used for the teaching that it well known to track user activity and store the information in databases. The examiner relied upon Robinson I and II and knowledge common to those of ordinary skill in the art at the time the application was made to show that additional features in the claims would have been obvious in view of the references and prior art.

Applicants argue that

Rather, the item [in Bieganski] is merely suggested to the user without an explanation as to why it is being recommended....

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...another deficiency in **Bieganski's** method is that it is *apparently* incapable of providing meaningful information to a user who does not yet have an interests profile (e.g., has not yet made any purchases).

These statistical tools and probability distributions apparently do not, however, seek to identify items that are disproportionately popular within, or which otherwise distinguish, specific communities.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "...disproportionately popular [items] within, or which otherwise distinguish specific communities...", "interest profile", presenting "...meaningful information...", "...without an explanation as to why it is being recommended...", user who "...has not yet made any purchases...", "...inhibit recommendations...", "...user who does not yet have an interest profile..." are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

A "traverse" is a denial of an opposing party's allegations of fact.¹ The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An

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adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

The Examiner respectfully notes that he has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 5,974,396) in view of Bieganski (US 6,321,221) and further in view of Robinson (US Patent 5790426).

¹ Definition of Traverse, Black's Law Dictionary, "In common law pleading, a traverse signifies a denial."

Anderson discloses the use of one or more databases to store information concerning users (see, for example, references to consumer, for example Consumer purchase repository, Col. 13, lines 20-29, Col. 17, lines 35-45).

Anderson tracks user activity. See, for example, references to logs, session logs, Col.6, lines 24-48.

Anderson stores information about user activity. Information stored includes activity history data. See, for example, Col. 12, lines 49-Col. Col. 14, line 60; see also references to consumer history data, for example Col. 10, lines 11-45.

Anderson analyses the stored information in various ways. Anderson refers to clusters. Customers may be clustered in various ways, including buying habits (for example, Col. 5, lines 37-64. See also Col. 12, lines 10-39.

Anderson identifies users as members of various subsets of data. See, for example, references to consumer groups, Col. 15, lines 1-67. See also, for example, references to clustering according to demographics, ethnic groups, geography (district information, zip codes, Col. 8, lines 15-43), activity time intervals (Col. 14, lines 50-59.

Anderson clusters products according to various parameters, including sales over particular time. The product clusters contain activity and history information that is based on actions of both members and non-members of particular customer clusters. For example, Col. 2, line 56-Col. 3, line 7. The product information, which includes actions by members and non-members of particular customer clusters, is used to product cluster summary reports and detailed customer reports. See, for example, references to product transactional information, at least in Col. 10, lines 11-30.

Anderson also permits targeting customers with promotional and advertising materials directed to products within clusters. For example, Anderson discloses that it may be more profitable to promote and provide products that appeal to certain ethnic groups instead of offering generic grocery items. Note that Anderson does not limit purchases of "ethnic" popular foods to only those members that are identified as belonging to a particular ethnic group. See, for example, Col. 2, lines 24-38.

Anderson notifies identified users in various ways. Anderson permits the use of names and address lists from data stored in the database. See, for example, references to targeting specific consumers and consumer clusters with marketing and other promotional literature. See, for example, Col. 2, lines 49-55. Customers may be targeted according to buying habits, needs, demographics and memberships in implicit and explicit clusters. See, for example, Col. 4, lines 34-49.

Anderson refers to targeted direct mail to user addresses. See, for example, Col. 4, lines 34-49, Col 8, lines 20-35). Promotional information may include newsletters, advertisements and others, which would be of interest to particular consumers targeted based on statistically determined buying behaviors and demographics to interest those consumers in particular retail products. See, for example, Col. 11, lines 7-50.

Anderson *does not* specifically disclose the use of email or web pages sent to targeted consumers. It is well known that email may be targeted to specific addresses and to particular domain names, perhaps specific to a company or other organization. These promotions may be sent to consumers at their request. The promotional materials may also be sent by email to consumers who are identified as belonging to a

consumer cluster, such as a cluster identified by domain name or company name. This may also be called unsolicited commercial email. At times, unsolicited email is sent to an entire organization and may be called *spam*.

Therefore, it would have been obvious to one of ordinary skill in the art to combine Anderson and email to send promotional materials to consumers. One of ordinary skill in the art would have been motivated to combine Anderson and email to send promotional materials to consumers for the obvious reason that customers may prefer to obtain promotional literature in electronic format rather than in paper form.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

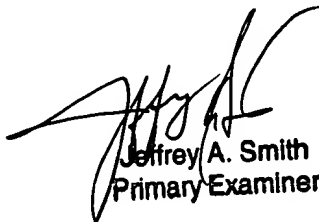
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8:30 am to 5:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

 **James Zurita**
Patent Examiner
Art Unit 3625
June 30, 2003


Jeffrey A. Smith
Primary Examiner